

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patricia Schnupp	Team: Team # 4	CCRB Case #: 200707027	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/01/2007 7:30 PM	Location of Incident: Barnes & Noble at 240 East 86th Street	Precinct: 19	18 Mo. SOL 11/1/2008	EO SOL 11/1/2008	
Date/Time CV Reported Fri, 05/18/2007 12:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 05/18/2007 12:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Charles Zwilling	20752	935452	019 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dante Alvigi	00165	915226	019 PCT
2. POM Christoph Paul	23414	935470	019 PCT
3. POM Kevin Murphy	02871	926088	019 PCT
4. POM Carlos Romero	08835	907193	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Charles Zwilling	Force: PO Charles Zwilling used physical force against § 87(2)(b)	

Synopsis

At approximately 7:30pm on May 1, 2007, § 87(2)(b) was conducting a book reading about what she terms “Armenian genocide” in her novel, at the Barnes & Noble at East 86th Street and 2nd Avenue in Manhattan. § 87(2)(b) who is Turkish, was in attendance to protest the author’s use of the term “genocide” to refer to what he considers a Turkish/Armenian conflict. § 87(2)(b) was with a group of approximately 10-15 other Turkish individuals, and during the book reading, several members of their group stood up and distributed leaflets with their viewpoint and made comments to the author and the audience. The manager of the store and the NYPD paid security detail, PO Carlos Romero (dressed in his NYPD uniform), asked the group to leave the store because they were disrupting the event, but they refused and continued to voice their opinions and to distribute the leaflets. PO Romero called for backup and several officers from the 19th Precinct arrived shortly thereafter. Officers instructed the members of the group to leave, and everyone in the group was compliant except for § 87(2)(b). PO Charles Zwilling and PO Kevin Murphy escorted § 87(2)(b) out of the store. § 87(2)(b) was initially compliant, but the situation escalated. § 87(2)(b) yelled loudly and turned around numerous times in an attempt to go back into the store. § 87(2)(b) became physically aggressive in his attempts to reenter the store which led to him being arrested. PO Zwilling allegedly punched him in the face (Allegation A) during the course of the arrest and PO Kevin Murphy and PO Christopher Paul assisted PO Zwilling with the handcuffing of § 87(2)(b).

§ 87(2)(g) § 87(2)(b) § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) was interviewed as a walk-in at the CCRB on May 18, 2007 (enclosure 8). He said that on May 1, 2007 at 7:30 PM he attended a book reading at the Barnes & Noble bookstore located on East 86th Street between 2nd and 3rd Avenues in Manhattan. The author, § 87(2)(b) § 87(2)(b) was reading from her novel about her mother’s experience during the Armenian genocide. § 87(2)(b) who is Turkish, disagreed with her portrayal of the Turkish/Armenian conflict and went to the event with the intention of asking questions and providing an alternative viewpoint to the author and the other audience members. Several other Turkish people were in the audience, most of them known (by face) to § 87(2)(b) and one of them had flyers with information about the subject that he began to pass out when § 87(2)(b) § 87(2)(b) opened the floor for questions from the audience.

The situation escalated because the author refused to take questions from the group of “Turks” and the woman who appeared to be coordinating the event called a manager and the NYPD paid security detail – identified by the SPRINT as PO Carlos Romero - to eject the group of “Turks” from the book reading. The group of Turkish individuals became agitated and several of them stood up to voice their protest. § 87(2)(b) said, “This is not fair.” Another individual said, “They should be allowed to ask their questions.” A Barnes & Noble employee attempted to collect the flyers already distributed. § 87(2)(b) continued to protest and shortly thereafter three or four officers in uniform (one of them was wearing biking shorts) arrived to back up PO Romero. They instructed various members of the group of Turkish individuals to leave (they were easily identified because they were all sitting together), as well as those who had flyers and would not return them to the woman attempting to collect them. The people whom they directed to leave complied without incident. § 87(2)(b) began to walk out of the row of seats and to exit the building, explaining in his interview, “I’m not going to argue with them.” As he walked out, an unknown woman began to take his picture. He said to her, “Do not take my picture without my permission, or I will sue your ass.”

§ 87(2)(b) exited the row of seats and began to walk toward the escalator to leave the building. The officer in a bicycle helmet and bicycle shorts walked ahead of him and two or three officers were walking behind him. § 87(2)(b) asked one of the officers – he could not recall which officer – “Is it legal to take someone’s picture without permission?” The officer responded, “Don’t ask anything. Just move.” § 87(2)(b) turned around and another officer punched him on his left cheek with a closed fist - this investigation identified this officer as PO Charles Zwilling. § 87(2)(b) “blacked out” and fell down. As he fell, he felt the officer push him to the ground by the back of his neck. § 87(2)(b)’s glasses fell off and he “blacked out” for ten seconds. He heard several officers tell him not to move and the officers handcuffed him. The officers lifted him up off the ground by his shirt and § 87(2)(b) complained that the handcuffs were too tight and that he felt choked by PO Zwilling pulling his shirt from behind. An officer said, “Oh, you deserve it.” His handcuffs were not loosened and the officer continued to hold his shirt from behind.

§ 87(2)(b) was placed in a marked van and transported to the 19th Precinct stationhouse. He was arrested for resisting arrest, inciting to riot and disorderly conduct. Although he refused medical treatment at the precinct, he sustained a bump on his left cheek and he had a headache and dizziness. He went to the emergency room at Long Island College Hospital after his release. His case was subsequently adjourned in contemplation of dismissal (six months).

§ 87(2)(b) stated that he would not recognize any of the officers because he did not look at their faces. He stated that they were all in “regular” uniforms except for the officer who was wearing the bicycle helmet and shorts. He believed that all of the officers present were males and he believed there to have been three or four officers present, as well as PO Romero. He stated that the only officer he has a complaint against is the one who punched him. This is the same officer who pushed him to the ground, handcuffed him and choked him by pulling his shirt. This officer did not enter the van in which § 87(2)(b) was transported.

The arrest photograph for § 87(2)(b) shows a cluster of small red marks on the left side of his mouth and a knot on the left side of his forehead (encl. 7A).

The medical records (encl. 24A-24W) pertaining to § 87(2)(b)’s visit to § 87(2)(b) on § 87(2)(b) indicate that he complained that he was hit in the head by PO Charles Zwilling on May 1, 2007. He also complained of a headache and a backache. The records indicate that he did not have dizziness, nausea or blurred vision. § 87(2)(b) told the attending physician that he did not suffer any loss of consciousness during this incident.

Results of Investigation

Witnesses Not Interviewed

§ 87(2)(b) provided the names and contact numbers of several Turkish individuals with whom he attended the book reading. Two of these individuals were interviewed via telephone, but after receiving PO Zwilling’s detailed memo book entry pertaining to the incident and after interviewing PO Zwilling, PO Paul, and PO Murphy it was determined that no other witnesses needed to be interview.

Witness Statements

§ 87(2)(b) was interviewed via telephone on July 9, 2007 (enclosure 11A). He was present at the Barnes & Noble book reading because, as a self-described Turkish activist, he was concerned about the author’s use of the word ‘genocide’ in describing the Turkish/Armenian conflict. He stated that there were numerous other Turkish people present, several of whom he knew by face, and a few of whom he knew by name. He stated that after the author finished reading, he and the other Turkish individuals present stood up and started handing out leaflets providing an alternative viewpoint on the issue. A police officer approached the group and asked them to leave. The members of the group refused to leave and the officer must have called for backup, because shortly thereafter, six or seven additional officers arrived and told the group again that they had to leave. This time, all of the members of the group complied, except for § 87(2)(b) who is known to § 87(2)(b). § 87(2)(b) did not see how § 87(2)(b) refused to comply because § 87(2)(b) left the store when the officers instructed him to. § 87(2)(b) waited outside of the store for the rest of the group to make its way outside, and while he was standing outside, a uniformed

tall male white officer took his identification and wrote down his name and address, informing § 87(2)(b) that he was writing his information down so that he would know if § 87(2)(b) returned to the store after the officers left. § 87(2)(b) did not obtain any identifying information for this officer, but stated that he would recognize him in a photograph. Shortly thereafter, § 87(2)(b) was escorted out by an officer in bicycle shorts. § 87(2)(b) had blood on his face. § 87(2)(b) did not see any force used against § 87(2)(b).

§ 87(2)(b) was interviewed via telephone on August 14, 2007 (enclosure 13A). He said, “I was there, but I didn’t see what happened. I heard the shouting and stuff, but I was just there.” He stated that he is Turkish, but he said that he did not know whether he knew the Turkish individuals who were handing out leaflets and subsequently made to leave the store. He said that he is familiar with § 87(2)(b) and that he heard § 87(2)(b) shouting, and saw that he had been handcuffed, but he did not see the arrest take place because he was reading the leaflet at the time. He did not see the officers who affected the arrest, and he did not see any officer use force against § 87(2)(b). He could not recall exactly what § 87(2)(b) was shouting, but he recalled that it had something to do with a woman taking pictures.

§ 87(2)(b) provided a written statement to Barnes and Noble and was interviewed via telephone on June 19, 2007 (encl. 9A-9B). Both statements are consistent and summarized below. § 87(2)(b) is the assistant manager at Barnes & Noble and she was working during the book reading by § 87(2)(b) on May 1, 2007. She became aware that there was a situation when she saw an audience member stand up and shout repeatedly during the book reading, “Tell the truth! Tell the truth.” § 87(2)(b) stated that the community relations manager, § 87(2)(b) who was sitting next to § 87(2)(b) asked the man to sit down, telling him that he was disrupting the event. The NYPD paid security detail – identified as PO Carlos Romero by communications – called for backup, saying to § 87(2)(b) “It’s better to be safe than sorry.” § 87(2)(b) did not witness PO Romero have any interaction with this individual. The man refused to sit down and to stop shouting for a few minutes, but other audience members started “shushing” him, and although at first he said, “Don’t shush me. Tell the truth,” he eventually sat down and stopped yelling. It appeared at this time that the situation was defused and § 87(2)(b) left to take her dinner break. She left before additional officers arrived, and she returned after the arrest had been made. She did not witness any interaction between any officers and any audience members. She later learned, from Manager § 87(2)(b) that the man who had been shouting was arrested and that his head struck the floor in the process of the arrest. There was still a little blood on the floor when § 87(2)(b) returned.

§ 87(2)(b) provided a written statement to Barnes and Noble on June 4, 2007, and was interviewed via telephone on June 20, 2007 (enclosure 10A-10C). Both statements were consistent and summarized below. He was working as the § 87(2)(b) of the Barnes & Noble on East 86th Street and 2nd Avenue in Manhattan during the incident. There was a book reading on the second floor of the store between approximately 7 PM and 9 PM. Several members of the audience were shouting and attempting to pass out leaflets. The police officer on the premises, identified through the investigation as PO Carlos Romero of the 30th Precinct, told them to sit down and to calm down but they did not comply. PO Romero called for backup and shortly thereafter three or four uniformed officers arrived and escorted several members of the audience out of the building. The only individual with whom the officers made physical contact was the individual who was subsequently arrested – § 87(2)(b).

§ 87(2)(b) could not describe the officers except to say that they were all in uniform and one was wearing shorts and a helmet. He stated that the officer in shorts was the officer who dealt with § 87(2)(b) primarily. The officer in shorts was the first officer other than PO Romero to approach § 87(2)(b). § 87(2)(b) could not hear what was said between any of the officers and any of the audience members, but he could read from their body language that the officers were telling certain audience members that they had to leave. All of those instructed to leave continued to shout as they left, but they were all physically compliant except for § 87(2)(b). Right before § 87(2)(b) walked out of § 87(2)(b)’s line of vision (there is a large pillar between where § 87(2)(b) was standing and where § 87(2)(b) was walking with the officers), § 87(2)(b) who was also yelling while he walked, attempted to turn around and walk in a different direction than the officers were instructing him to. § 87(2)(b) could not recall how the physical interaction began, but said that he heard a scuffle that took place behind the pillar, out of his line of sight.

§ 87(2)(b) stated that the next time he saw § 87(2)(b) he was handcuffed and walking down the escalator with blood on his face. He did not hear any conversation take place between any of the officers and § 87(2)(b) and he did not recall how § 87(2)(b) was being held as he was escorted down the escalator. He recalled seeing blood on § 87(2)(b)'s face, but he could not specify as to where the blood came from or whether there were any other injuries.

§ 87(2)(b) provided a written statement to Barnes and Noble on June 4, 2007, and was interviewed via telephone on August 15, 2007 (enclosure 12A-12B). Both statements were consistent and are summarized below. She works for the Barnes & Noble located at East 86th Street and 2nd Avenue in Manhattan as the community events coordinator. On May 1, 2007, she was running the book reading on the second floor of the store from about 7 PM to 9 PM. During the event, several members of the audience stood up and started distributing leaflets and acting very disruptive. § 87(2)(b) called a manager and requested that the manager ask the group to leave. The manager and the paid security detail asked the group to leave, and they did not comply. The paid security detail officer called for backup, and shortly thereafter, three or four additional officers arrived and instructed the group to leave. All of the members of the group were compliant with the officers and walked out without incident. The individual who was arrested was initially cooperative, and started to leave when the officers asked him to, but he continued to shout as he was walking out of the store. § 87(2)(b) did not see how it happened, but she did see this individual on the floor at one point. She did not see how he got back on his feet, she did not see any officer use force against him and she did not see any visible injuries on him.

Officer Identification

PO Charles Zwilling was the arresting officer and he was identified by the police documents pertaining to the incident. PO Zwilling made a detailed memo book entry (enclosure 17) in which he identified PO Kevin Murphy and PO Paul as assisting him in effecting the arrest. PO Zwilling and PO Paul were both wearing shorts and assigned to bicycles, and PO Zwilling identified himself as the officer who punched § 87(2)(b) and PO Christopher Paul identified himself as the officer who escorted § 87(2)(b) out of the store. PO Carlos Romero is identified as the paid security detail officer by the communications pertaining to the incident (enclosure 24). Based on communications and roll call, Sgt. Kevin O'Donnell, Sgt. Thomas Correa, Sgt. Joseph Cutrone, PO Patrick Reilly, PO Henry Zayas and PO Daniel Hill responded to the incident location.

Officers Not Interviewed

PO Zayas, PO Hill, Sgt. Correa, Sgt. Cutrone and Sgt. O'Donnell are all listed on the SPRINT as responding to this incident. The SPRINT does not indicate the time that these officers arrived. Based on the officers' testimony, however, it does not appear that these officers would have witnessed the interaction between PO Zwilling and § 87(2)(b). Therefore it was determined that their statements would not change the recommendations of the allegation.

Officer Statements

PO Zwilling's memo book (enclosure 16A-16E) for May 1, 2007 indicates that his exact tour of duty was 1730 to 0205. He was assigned to Bike #6, covering the area between Lexington Avenue and Park Avenue, from East 80th Street to East 90th Street. At 1930, a call for backup came from 244 East 86th Street in regards to a disorderly group. At 1933, PO Zwilling arrived at the location. At 1954, PO Zwilling had an arrest and the 19th Precinct conditions team transported him to the stationhouse. At 2015, PO Zwilling arrived at the 19th Precinct stationhouse. At 2045, EMS arrived at the stationhouse and perp refused treatment. EMS #§ 87(2)(b) ACR #§ 87(2)(b) At 2125, friend § 87(2)(b) § 87(2)(b) Nutley, NJ 07110, 9/1/72, accepting personal property of defendant - \$200 USC, wallet with credit cards, Blackberry cell phone and car keys. At 2130, online arrest report entered § 87(2)(b) At 2140, (undecipherable). At 2145, perp transported to 28th Precinct HUB by PO Reyes and PO Pecona. At 2155, faxed online to ECAB. At 2205, ECAB confirmed receipt. At 2210, (illegible). At 2350, § 87(2)(b) At 0005, "Received fax, called Berry back. At 0025, "Received new fax. Signed and faxed back." PO Zwilling's memo book indicates that he was end of tour at 0205, but he added a detailed entry after his tour ended. The memo book indicates that at 1945, "When I arrived at scene a bookstore patron told me there was a fight on second level. Two 19th Precinct cops and security detail cop were upstairs, so I ran up escalator to

join them. When I reached 2nd Level, PO Murphy was attempting to remove man, who was screaming and highly agitated. Man refused orders by PO Murphy to leave and squared up with him. I took this as a sign of aggression and grabbed man by collar of shirt and arm to physically escort man to escalator. I walked with him about 20 feet when male suddenly squirmed free of my grasp and whipped around to face me, screaming, "Where is the freedom?" At that moment I feared for my safety and that of PO Murphy, who was to my left, and struck male with closed fist on the left side of face. PO Murphy, I, PO Paul and other cops then took male to the ground. Male actively resisted attempts to handcuff him and orders to stop resisting. I struck male once in right ribcage in an attempt to bring his arm down and behind him. When male was finally cuffed and stood up, he had a laceration on the left corner of his mouth and a bruise on the right side of his forehead."

The complaint report (UF-61) (encl. 21A-21B), the arrest report (encl. 22A-22B), and the criminal court complaint (encl. 23A-23B) indicate that § 87(2)(b) caused public alarm by yelling at a speaker and a crowd of at least 35 people inside of a Barnes and Noble on East 86th Street in Manhattan. § 87(2)(b) also refused to be handcuffed. § 87(2)(b) was § 87(2)(b)

PO Charles Zwilling was interviewed at the CCRB on August 16, 2007 (encl. 17A-17B). He stated that on May 1, 2007 he responded to the Barnes & Noble on East 86th Street and 2nd Avenue in Manhattan because PO Carlos Romero, the paid security detail at the store, had called for backup to deal with a disorderly group of protesters. PO Zwilling responded with his partner, PO Christopher Paul. Both officers were wearing uniformed shorts and a polo shirt because they were working on bicycles. PO Zwilling became aware (could not recall how), that there was a man inside of the store who was refusing to leave and was acting disorderly.

PO Zwilling entered and PO Paul entered behind him. The officers went up to the second floor of the store and saw that PO Romero and PO Kevin Murphy were the only other officers present on the floor. PO Murphy was the officer dealing with § 87(2)(b) and PO Zwilling could not recall whether PO Romero was assisting. PO Murphy was escorting § 87(2)(b) out by holding his arm and ushering him toward the escalator. § 87(2)(b) was shouting, "Where is the freedom?" and other similar comments, and as PO Zwilling arrived at the top of the escalator, he witnessed § 87(2)(b) pull free of PO Murphy's grip and spin around so that he was facing PO Murphy. At this time, § 87(2)(b)'s back was to PO Zwilling and PO Zwilling approached to assist. PO Zwilling grabbed § 87(2)(b) by his right arm and the back of his shirt. PO Murphy grabbed § 87(2)(b)'s other arm and the two officers turned § 87(2)(b) back toward the escalator and started walking him toward it. § 87(2)(b) pulled free of the officers' grasp and turned around to face them while shouting. PO Zwilling took a step back and § 87(2)(b) took a step toward him. PO Zwilling stated he feared for his safety at this time. At this time, PO Zwilling punched § 87(2)(b) with his right fist on the left side of § 87(2)(b)'s face, near his mouth. § 87(2)(b) spun around but stayed on his feet. Immediately, PO Murphy and PO Zwilling tried to grab § 87(2)(b)'s arms and handcuff him, but § 87(2)(b) flailed his arms and prevented the officers from handcuffing him. Both officers grappled with § 87(2)(b). PO Paul assisted by grappling with § 87(2)(b) as well, and all of the officers and § 87(2)(b) toppled to the ground. When § 87(2)(b) was laying face down on the ground, he was still preventing the officers from putting his hand behind his back. He had his right arm stretched out above his head and he resisted PO Zwilling's attempts to pull it back and disregarded the officers' repeated orders to stop struggling. In an effort to pull § 87(2)(b)'s arm behind his back, PO Zwilling punched him in the right ribcage. At this time he was able to pull § 87(2)(b)'s arm behind his back and to handcuff him.

When the officers stood § 87(2)(b) up, by grabbing him by the arms, PO Zwilling saw that § 87(2)(b) was bleeding from the side of his mouth where he had punched him, and that he had a lump on his head. PO Zwilling could not say how § 87(2)(b) sustained the injury on his head. PO Zwilling stated that PO Paul may have escorted § 87(2)(b) out of the store, but he could not say definitively whether this was the case. PO Zwilling stayed upstairs to talk to witnesses, and he did not have further interaction with § 87(2)(b) until he returned to the stationhouse and completed the arrest paperwork. The only interaction he had during this time with § 87(2)(b) was a conversation about why § 87(2)(b) was protesting the book reading. This was a non-confrontational conversation and § 87(2)(b) did not complain at this time about the incident.

PO Thomas Murphy was interviewed at the CCRB on November 8, 2007 (enclosure 20A-20B). PO Murphy did not have any memo book entries regarding this incident. On May 1, 2007, PO Kevin Murphy was assigned to the conditions unit with Sgt. Joseph Cutrone, PO Henry Zayas, and PO Daniel Hill. All of the officers were assigned to a marked 12 passenger van and in uniform. PO Murphy responded to a radio run on Barnes and Noble on 86th Street in Manhattan. An officer assigned to a paid security detail at Barnes and Noble had called for backup to deal with a disorderly group inside the store. When PO Murphy arrived he took the escalator upstairs where there was an author reading at a podium. A Barnes and Noble employee pointed out a group of people who needed to be removed. These people were not being disruptive at the time. PO Murphy and other officers that he did not recall went over to inform these people that they had to leave. It was a group of 4-5 men. All of the people were compliant and left their seats. One man, later identified as § 87(2)(b) started to resist once he left his seat and entered the aisle.

PO Murphy and PO Zwilling were behind § 87(2)(b) and Mr. § 87(2)(b) kept turning around and yelling at the officers very loudly about not wanting to leave. § 87(2)(b) did not want to leave and kept trying to walk back to the area where the book reading went on. PO Murphy explained that Barnes and Noble had the right to ask him to leave because it is a private business and he does not have the right to be in there. § 87(2)(b) turned around and yelled at PO Murphy and PO Zwilling several times and continued to be non-compliant. PO Murphy and PO Zwilling did not touch § 87(2)(b) at this time. § 87(2)(b) then lunged towards PO Murphy. PO Murphy indicated that § 87(2)(b) lunged toward him with his upper body first and his arms out. PO Murphy did not recall whether or not § 87(2)(b)'s fists were open or closed. PO Zwilling was to the right of § 87(2)(b). Before § 87(2)(b) could get to PO Murphy PO Zwilling's right arm came across and struck § 87(2)(b). PO Murphy did not know if PO Zwilling's fist was open or closed or where he struck § 87(2)(b). § 87(2)(b) responded to this by lunging towards PO Zwilling, leading with his arms and upper body. PO Murphy intervened and grabbed § 87(2)(b) from behind and brought him to the ground. PO Murphy grabbed § 87(2)(b)'s body and performed a leg sweep bringing § 87(2)(b) to the ground. PO Murphy believed that § 87(2)(b)'s chest hit the ground first. § 87(2)(b) was then handcuffed. There were three other officers, whom PO Murphy could not recall, helped him handcuff § 87(2)(b). § 87(2)(b) was picked up by his arms and stood up, at which time PO Murphy noticed § 87(2)(b) was bleeding from his head. PO Murphy did not see any officer choke § 87(2)(b). PO Murphy did not notice if anyone was taking any pictures of the commotion. EMS came to the scene and treated § 87(2)(b).

PO Christopher Paul was interviewed at the CCRB on August 16, 2007 (encl. 18A-18B). He did not have his memo book for the incident date. He said that on May 1, 2007 he was partnered with PO Charles Zwilling and they were assigned to a bicycle post in the 19th Precinct. They responded to a call for backup from PO Carlos Romero, the paid security detail working at the Barnes & Noble at East 86th Street and 2nd Avenue in Manhattan. When they arrived, numerous civilians and unidentified officers were standing outside of the store talking calmly. PO Paul and PO Zwilling entered the store because they were informed that an individual was inside of the store acting disorderly and refusing to leave.

PO Zwilling entered the store first and proceeded up the escalator to the second floor. PO Paul followed behind him. When the officers arrived on the second floor, PO Paul saw PO Murphy and PO Romero were already present on the second floor but no other officers were upstairs at the time that PO Paul and PO Zwilling arrived on the floor. PO Murphy was attempting to escort § 87(2)(b) out of store by guiding him by his arm and walking behind him. PO Romero was standing behind PO Murphy and he was not making physical contact with § 87(2)(b). § 87(2)(b) was physically compliant at first, but he was shouting comments like, "I deserve to be heard" and other similar complaints that PO Paul could not remember specifically. PO Zwilling approached and assisted PO Murphy by holding § 87(2)(b)'s other arm and escorting him out of the store. PO Paul walked behind PO Zwilling, PO Murphy and § 87(2)(b) as they walked toward the escalator. Suddenly, § 87(2)(b) pulled away from the officers and spun around so that he was facing the officers. PO Paul could not say exactly what § 87(2)(b)'s action consisted of, whether he raised his hands or if he attempted to swing at the officers, but a physical interaction ensued between the officers and § 87(2)(b). PO Paul did not see PO Zwilling punch § 87(2)(b) stating that it was a hectic situation with a lot going on and he could not state specifically what actions each officer did during the physical interaction. He stated that PO Zwilling and PO Murphy both grappled with § 87(2)(b) in an effort to handcuff him, but § 87(2)(b) resisted their efforts to do so by pulling away from them and flailing his

arms. At this time, PO Paul assisted the officers by grappling with § 87(2)(b). All four of them toppled to the ground together. When they landed on the ground, the officers attempted to handcuff § 87(2)(b) and § 87(2)(b) continued to resist by refusing to put his hands behind his back.

PO Paul grabbed one of § 87(2)(b)'s arms and had his other hand pressing § 87(2)(b)'s head down on the ground. His focus was on § 87(2)(b)'s face, because § 87(2)(b) was bleeding, and PO Paul wanted to make sure the blood did not get on himself or the other officers. He could not recall who eventually handcuffed § 87(2)(b) and because he was focused on § 87(2)(b)'s head, he did not see whether any officer punched § 87(2)(b) while he was on the ground. PO Paul did not strike § 87(2)(b) at any time during the incident. The officers stood § 87(2)(b) up by holding onto his arms and PO Paul escorted § 87(2)(b) out of the store by holding him by the handcuffs and by the back of the shirt. PO Paul could not recall whether § 87(2)(b) complained that he was being choked by the pressure from his shirt, but he stated that § 87(2)(b) was straining against his grasp and causing the shirt to pull against himself. He did not recall any conversation taking place between him and § 87(2)(b) as they left the store, and when he brought him outside, other unidentified officers transported § 87(2)(b) to the stationhouse. PO Paul saw § 87(2)(b) back at the stationhouse but he did not interact with him.

PO Carlos Romero was interviewed at the CCRB on July 24, 2007 (encl. 15A-15B). His memo book entries (encl. 14A-14B) for May 1, 2007 indicate that he had a vacation day. On May 1, 2007 PO Carlos Romero was working a NYPD paid security detail for the Barnes & Noble located at 240 East 86th Street in Manhattan. At approximately 7:30 PM, a store manager asked him to go up to the second floor where a book reading was taking place because there was a group of about 8 or 9 “hecklers” who were disrupting the presentation. PO Romero approached the group and asked them to leave the scene. They refused and began to hand out leaflets to the other audience members. Because PO Romero was working alone, he used the store telephone to call 911 – his radio was dead – and within three or four minutes, about ten uniformed officers from the 19th Precinct responded. PO Romero did not recognize any of these officers because he is assigned to the 30th Precinct. When the officers arrived, they approached the group of hecklers and told them to leave. The group complied except for one individual – identified by this investigation as § 87(2)(b) – who continued to verbally protest. He eventually walked out of the row of seats after being told repeatedly by the officers to do so, but he continued to shout as he was walking toward the escalator with officers in front of him and behind him. PO Romero stated in his CCRB interview that he was later informed by an unidentified officer that § 87(2)(b) tried to punch another unidentified officer and that is what led to his arrest. PO Romero saw about 5 or 6 of the officers tackle § 87(2)(b) to the ground and handcuff him, though his view of this part of the incident was partially obstructed by a large pillar near the top of the escalator. PO Romero stated that § 87(2)(b) was on the ground for “a few” seconds, and that he did not see any injuries or blood on § 87(2)(b) when the officers then escorted him down the escalator. He stated that officers who were escorting § 87(2)(b) held him by the arms, and that he did not see any officer grab the back of § 87(2)(b)'s shirt. He did not see any officer punch § 87(2)(b) and the only force he saw used against § 87(2)(b) was when the officers brought him to the ground and handcuffed him. § 87(2)(b) did not resist the officers when they tackled him to the ground, though he continued shouting throughout the incident. PO Romero could not recall exactly what he shouted.

The communications (encl. 25A-25J) pertaining to the incident indicate that at 7:30 PM on May 1, 2007, PO Romero, who was working a paid detail in the Barnes and Noble at 240 East 86th Street in Manhattan, called 911 and requested police to respond to the location to escort people out of the store. PO Romero stated that he was at the location by himself and in uniform, and that no weapons were involved. At 7:31 PM, 19ST2 and 19ST1 were 10-98. At 7:37 PM, the records indicate, “tape reviewed...officer states under control no weapons...just needs assistance removing disorderly...adv he is alone.” At 7:54 PM, 19PP6 had one arrest and went over with 10-82 (“verify arrest”). At 7:54 PM, 19ST2, 19ST1 and 19ST3 resumed patrol. At 8:04, the records indicate, “male out of auto.”

The command log (encl. 27A) entry for § 87(2)(b)'s arrest indicates that PO Zwilling was the arresting officer and that he arrived at the 19th Precinct stationhouse at 20:03. He was charged with obstruction of governmental administration, disorderly conduct, resisting arrest and inciting a riot. His condition was apparently normal and the entry indicates that EMS #6402 responded to the stationhouse but that § 87(2)(b)

§ 87(2) refused medical attention. § 87(2)(b) was transported to Manhattan Central Booking at 21:44 in patrol car #5304.

The tour 3 roll call from the 19th Precinct on May 1, 2007 (encl. 28A-28C) indicates that PO Zwilling and PO Paul were assigned to Bike Unit #5 and their tour was 1730 to 0205. PO Murphy was assigned to a conditions auto. PO Reilly, PO Zayas and PO Hill were also assigned to the conditions auto. Sgt. O'Donnell, Sgt. Correa and Sgt. Cutrone were assigned to ST1, ST2 and ST3, respectively.

Stop and Frisk Report

There was no Stop and Frisk Report on file for § 87(2)(b)

§ 87(2)(c), § 87(2)(b)

PO/CV CCRB History

A search of the CTS database showed that § 87(2)(b) has not filed other complaints with the CCRB and PO Zwilling has no CCRB substantiated cases in his 3 years with the NYPD.

Conclusions and Recommendations

Disputed/Undisputed Facts

It is not disputed that § 87(2)(b) went to this book reading and disrupted it. § 87(2)(b) claimed that he was only loud and stood up during the questioning portion of the book reading. Eyewitness accounts refute this and indicate that § 87(2)(b) along with other Turkish activists, stood up and started yelling in the middle of the book reading. § 87(2)(b) claimed that he walked out quietly and was punched in the face by PO Zwilling only after he had asked if it was illegal for people to take his pictures as he was being escorted out of the store. This is disputed by all of the officers and the eyewitnesses. They all stated § 87(2)(b) was being loud and yelling as he was leaving the store. The officers interviewed claimed § 87(2)(b) continued to resist by turning around and attempting to walk back into the store.

PO Murphy, PO Paul, and PO Zwilling all indicated that as they escorted § 87(2)(b) out of the store, he turned around in an aggressive manner with his arms outstretched. It is not disputed by either party that § 87(2)(b) was punched in the face, which caused an injury to his face. The circumstances surrounding this punch are disputed. § 87(2)(b) also claimed that he “blacked out” during this incident, which is disputed by his medical records. § 87(2)(b) alleged he fell to the floor after being punched in the face. However, all of the officers testified that they had to assist PO Zwilling in handcuffing § 87(2)(b) because he was still resisting. PO Zwilling admitted to punching § 87(2)(b) in the ribs in an effort to gain his compliance and handcuff him even though § 87(2)(b) never alleged that this occurred.

§ 87(2)(g)

§ 87(2)(g)
[REDACTED]

Allegation Not Pleaded

Although § 87(2)(b) claimed that the officer who escorted him out of the store held him by the shirt in a way that was choking him, he made no complaint of having trouble breathing. § 87(2)(g)

[REDACTED] t. Because PO Paul's actions were consistent with the way an officer escorts a handcuffed individual during a normal arrest, and because § 87(2)(b) was noncompliant throughout the entire incident, no chokehold allegation was formally pleaded.

Allegation A: PO Charles Zwilling used physical force against § 87(2)(b)

[REDACTED] disrupted a peaceful book reading and was the only person out of a group of several that was arrested. § 87(2)(b) was not cooperative with the officers lawful order to disperse, and when he finally started to leave, he continued to shout comments and tried to turn around and go back into the store despite the officers' repeated directive to stop yelling and to leave the store. § 87(2)(b)'s demonstrated lack of compliance with the officers, coupled with the fact that he physically resisted the officers' attempts to peacefully escort him out of the store caused PO Zwilling to reasonably fear for his own safety. § 87(2)(b) stepped towards the officers with his arms out after repeatedly ignoring the officers' attempts to peacefully remove him from the store. PO Zwilling used the appropriate level of physical force necessary to prevent § 87(2)(b) from attacking himself or his partners, which, given the facts, was a justified concern. This exactly what Patrol Guide procedure 203-11 states; "Only that amount of force necessary to overcome resistance will be used to affect an arrest." Once PO Zwilling punched § 87(2)(b) he was handcuffed a few moments later after a brief struggle. This was a crowded bookstore and a prolonged struggle to handcuff § 87(2)(b) could have injured customers in the store or damaged Barnes and Noble property. Punching § 87(2)(b) in the face prevented the situation from escalating because the officers quickly handcuffed § 87(2)(b) and escorted him outside.

Additional factors indicate that the punch was not excessive force. § 87(2)(b) stayed on his feet after the punch, and PO Zwilling and PO Murphy were unable to handcuff him without the assistance of PO Paul. The fact that it took additional assistance and that § 87(2)(b) continued to resist after the punch indicates that not only was the punch not excessive, but that it was not sufficient force to overcome § 87(2)(b)'s resistance. Eventually PO Murphy, PO Zwilling, and PO Paul all fell to the ground. PO Zwilling admittedly struck § 87(2)(b) in the right ribcage to bring his arm behind his back, even though § 87(2)(b) testified he was punched only once in the face. No force was used against § 87(2)(b) after he was handcuffed, and the force used was meticulously documented by PO Zwilling in his memo book and in the police documents pertaining to the arrest.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: